	Application No.	Applicant(s)
Office Action Summary	09/775,585	CRANDALL, E. STEPHEN
	Examiner	Art Unit	
	Kristie D. Shingles	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 September 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>39-54</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>39-54</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendments
Claims 1-38 have been cancelled.
Claims 39-54 have been newly added.

Claims 39-54 are pending.

Response to Arguments

I. Applicant's arguments with respect to claims 30-38 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

II. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

III. **Claims 39, 40, 42, 43 and 47-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

    a.   **Claim 39** recites the limitation "stored program information" in line 9. There is insufficient antecedent basis for this limitation in the claim.

    b.   **Claim 40** recites the limitation "the performance transmitter" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

    c.   **Claim 42** recites the limitation "the performance transmitter" in line 3. There is insufficient antecedent basis for this limitation in the claim.

    d.   **Claim 43** recites the limitation "the performance transmitter" in line 2. There is insufficient antecedent basis for this limitation in the claim.

    e.   **Claim 47** recites the limitation "the performance transmitter" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

f.   **Claim 48** recites the limitation "the performance transmitter" in lines 3 and 4.
        There is insufficient antecedent basis for this limitation in the claim.

g.   **Claim 49** recites the limitation "the performance transmitter" in line 3. There is
        insufficient antecedent basis for this limitation in the claim.

h.   **Claim 50** recites the limitation "the performance transmitter" in line 2. There is
        insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

IV.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

V.   **Claims 39 – 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Roop
et al* (US 6,216,265) in view of *Greer et al* (US 5,978,828).**

a.   **Per claims 39 and 46** (differ only by statutory class), *Roop et al* teach the method

for receiving performance information over a network for generating a pseudo-live performance,

the method comprising:

- detecting a need for the performance information by determining that stored
  performance information is out-of-date (*col.7 lines 5-36, col.10 lines 10-24,
  col.73 lines 25-38—determines stored television schedule is old by time
  identifier*);

- selecting a process for obtaining the needed performance information (*col.7 lines
  15-27*);

- executing the process for obtaining the needed performance information (*col.7
  lines 15-36*); and

- generating the pseudo-live performance by mixing information corresponding to one or more portions of the needed performance information with other information (*col.8 lines 23-65, col.9 lines 48-56*).

Yet *Roop et al* fail to explicitly teach determining that stored program information is out-of-date further comprises: transmitting a query to determine a time of a latest update of the stored performance information, receiving the time of latest update of the stored performance information in response to the transmitting of the query, accessing a time-stamp of the stored performance information, and determining whether the time-stamp of the stored performance information matches the time of the latest update of the stored performance information. However *Greer et al* teach querying to receive update information to determine a time of the last update/modification, accessing the timestamp of the webpage object and determining if the stored object has been updated (*col.3 line 64-col.4 line 31, col.5 line 22-col.6 line 25, col.7 lines 35-45, col.8 lines 23-52, col.9 lines 1-10*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Roop et al* with *Greer et al* for the purpose of determining that stored data is old or out-of-date by comparing latest update times and time-stamps. Time-stamping and maintaining the date and time of data modifications are common techniques used in the art for effectively implementing updates, synchronizing data and keeping track of the current version of stored data in order to keep the stored data up-to-date.

b.   **Per claim 40**, *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of information desired by an end-user; a schedule of an end-user; and scheduled times at which information is transmitted by the performance transmitter (*col.33 lines 58-67, col.42 line 61-col.43 line 50, col.74 lines 40-45*).

c.   **Claim 47** is substantially similar to claim 40 and is therefore rejected under the same basis.

d.   **Per claim 41**, *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach the method further comprising determining whether a performance transmitter is of a type that is capable of receiving and responding to an information request, wherein the determining further comprises one or more of: transmitting a query signal to the performance transmitter; passively receiving a signal from the performance transmitter; and accessing a profile (*col.9 line 58-col.10 line 5, col.10 lines 25-56, col.29 lines 13-24*).

e.   **Claim 48** is substantially similar to claim 41 and is therefore rejected under the same basis.

f.   **Per claim 42**, *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach the method further comprising: generating an information request; and transmitting the request to the performance transmitter via the network (*col.41 lines 23-32, col.74 lines 40-45; Greer et al: col.8 lines 30-52, col.9 lines 1-10*).

g.   **Claim 49** is substantially similar to claim 42 and is therefore rejected under the same basis.

h.   **Per claim 43**, *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach wherein the selecting a process comprises determining an appropriate time to receive information from the performance transmitter (*col.10 lines 1-24*).

i.   **Claim 50** is substantially similar to claim 43 and is therefore rejected under the same basis.

j.   **Per claim 44**, *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach wherein generating the pseudo-live performance comprises: retrieving the other information; decoding one or more commands of the other information; and performing one or more tasks instructed by the commands (*col.29 line 13-col.30 line 50, col.31 line 12-col.34 line 63*).

k.   **Claim 51** is substantially similar to claim 44 and is therefore rejected under the same basis.

l.   **Per claim 45,** *Roop et al* teach the method of claim 44, wherein the one or more commands includes one or more of programming commands that execute a software program, housekeeping commands that load, delete, change or overlay stored information, and performance commands that reproduce stored information from one or more specified locations of a storage device (*col.29 line 13-col.30 line 50, col.31 line 12-col.34 line 63*).

m.   **Claim 52** is substantially similar to claim 44 and is therefore rejected under the same basis.

n.   **Per claim 53,** *Roop et al* with *Greer et al* teach the method of claim 39, *Roop et al* further teach wherein the performance information includes multimedia performance information (*Abstract, col.9 lines 48-67, col.10 lines 43-56; Greer et al: col.3 lines 26-39*).

o.   **Claim 54** is substantially similar to claim 53 and is therefore rejected under the same basis.

Conclusion

VI.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Santoro et al (6724403), Rowe et al (6792615), Kenner et al (6496856), Haddad (6072982).

VII.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner
Art Unit 2141

kds